

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3428 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

JUNAGADH NAGAR PALIKA.

VERSUS

THE COLLECTOR OF JUNAGADH & ORS.

Appearance:

MR AH MEHTA for the Petitioner

MR HL JANI for Respondent No.1

None present for other Respondents

Coram: S.K. Keshote, J

Date of decision: 21.1.97

C.A.V. JUDGMENT

None of the respondents have chosen to file reply to this Special Civil Application and as such the

averments made therein stand uncontroverted. The petitioner's counsel has also not advanced any oral arguments but has given written submissions. The learned counsel for the petitioner has also filed translated copy of the order annexure 'D'. Perused the Special Civil Application and written submissions submitted by the learned counsel for the petitioner.

2. The petitioner is a Nagar Palika. The Standing Committee of the Nagar Palika passed a Resolution No.108 dated 24.6.1984, under which it was resolved that the land out of Survey No.359/1 admeasuring 5069.17 sq.mts. be sold to Shree Sorath Shikshana and Sanskruti Sangh. This Resolution of the Standing Committee of the Nagar Palika was to be approved by the General Board and in respect thereof, a meeting of the General Board was fixed on 17th July 1984. The respondents No.2 to 9 made an application to the Collector on 16th July 1984, a copy of which is submitted on record of this case as annexure 'A', and prayed therein that the General Board of the Nagar Palika be restrained from considering the Resolution of the Standing Committee being No.108 dated 24th June 1984. On 16.7.84, that application has been considered by the Collector and an exparte injunction has been granted in favour of respondents No. 2 to 9. The petitioner Nagar Palika submitted a detailed reply to the show cause notice served by the Collector upon it on the application made by respondents No.2 to 9. Under the order dated 30th May 1986, the Collector confirmed the order of exparte injunction granted on 16th July 1984. The exparte injunction granted on 16th July 1984 and confirmed later on was to the effect that:

- (a) the general board meeting of the Nagar Palika to be held on 17.7.84 should not consider item No.27 of the agenda (sale of the land abovementioned);
- (b) the municipality shall maintain the said land by keeping it open for public purpose;
- (c) the municipality was restrained from selling the said land.

Challenge is made by the petitioner by this petition to the order of the Collector, respondent No.1 herein dated 30th May 1986, annexure 'D'.

3. The matter has been admitted by this Court on 8th August 1986 after notice to the respondents and interim relief in terms of para 13(B) has been granted. Para 13(B) of the Special Civil Application reads as under:

"That pending the hearing and final disposal of this petition, execution operation and further proceedings pursuant to the impugned order passed by the first respondent at annexure 'D' be stayed"

4. The interim relief which has been granted by this Court still continues but the learned counsel for the petitioner has not brought on record whether the Resolution of Standing Committee dated 24th June 1984 was approved by the General Board of the petitioner Nagar Palika or not. This fact has to be brought on record because after grant of interim relief by this Court there was no hurdle or obstruction in the way of the petitioner to consider the matter of approval of the aforesaid Resolution of the Standing Committee.

5. The contention of the learned counsel for the petitioner in written submissions is that the order of the Collector impugned in this Special Civil Application is ultra vires to the provisions of Section 258 of the Gujarat Municipalities Act, 1963. Reliance is placed by the learned counsel for the petition in the written submissions in support of the aforesaid contention on a Division Bench decision of this Court in the case of H.H. Parmar v. Collector, Rajkot & Anr., reported in XX(2) GLR 97.

6. I have gone through the order of the Collector dated 30th May 1986. The order has been made by the Collector restraining the petitioner Nagar Palika from using or selling the land of Survey No.359/1 and further direction has been issued that the Municipal Corporation, Junagadh shall be responsible to maintain the said land by keeping it open for public purpose. As stated earlier, nothing has been brought on record by the petitioner whether the land in dispute has been sold to the aforesaid institution or not and as such the only and natural corollary following therefrom is that the land is not sold to the said institution. It is also not the case of respondents No.2 to 9 that the Corporation has sold the land in dispute to the institution. So far as the respondent No.1 is concerned, it is also unable to throw light on this fact. The Standing Committee of the petitioner No.1 at one point of time, way back on 17th July 1984 resolved to transfer land from Survey No.359/1 to the institution abovenamed. But that decision of the aforesaid committee was not final. It was subject to approval or sanction by the General Board of the petitioner. It is not the case of the parties that the said Resolution of the Standing Committee of the

petitioner has been approved by the General Board of the petitioner. It is also not case of either of the parties, as stated earlier, that the land has been given to the institution. Now we are in the year 1996 and for all these 12 years the land in dispute has been kept open and by passing of this long period more public interest would have been created and accrued to the public as for all these years this land is being used for the public purpose and as such, I consider it to be more appropriate and proper to send the matter back to the petitioner to decide the matter in issue afresh after giving the notice to the respondents No.2 to 9 as well as a general notice to the public at large. In view of this direction I do not consider it to be appropriate to go on the validity of the order made by the Collector. The matter is to be decided with reference to and for the public at large and the petitioner, being a corporate body constituted for the purpose of well being of public, shall consider the matter in that context. The question whether the land in dispute should be kept open for the public purpose is a question which has to be decided by the petitioner after hearing the public.

7. In the result, this writ petition is disposed of in terms as aforesaid. Rule stands disposed of accordingly with no order as to costs.

.....

(sunil)